IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

Crl.MC.No. 749 of 2005()

PETITIONER: ACCUSED NO.4:

N.GANGADHARAN,
ADVOCATE, `GANGA', P.O. MAMBA, KANNUR DISTRICT.

BY ADV. SRI.K.V.SOHAN
SRI.JOYAN P. ANTONY
SMT.SREEJA SOHAN.K.
SMT.K.AMBILY

RESPONDENTS: COMPLAINANT & DEFACTO COMPLAINANT:

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1. THE SUB INSPECTOR OF POLICE,
TELLICHERRY POLICE STATION, TELLICHERRY.

2. THE MANAGER,
VIJAYA BANK, TELLICHERRY.

BY PUBLIC PROSECUTOR SRI. S. DILEEP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.K. BASHEER, J.

CRL.M.C. NO. 749 OF 2005

Dated this the 22nd day of February, 2007

O R D E R

Petitioner has been charge sheeted along with three others by Thalassery Police for offences punishable under Sections 468, 420, 471 and 120 (B) read with Section 34 I.P.C. Petitioner has been arraigned as accused No.4 in the above case, which has been taken on file by the Judicial Magistrate of First Class, Thalassery in C.C. No.447/04.

2. The gravamen of the charge against the accused is that accused No.1 had availed a loan of Rs.1 lakh from Vijaya Bank, Thalassery branch, on December 26, 2002. Accused No.2 had stood as surety for the said loan and had executed a letter of guarantee. Both the accused had represented before the bank that they were working as clerks in Kiliyanthara Service Co-operative Bank at Kiliyanthara in Kannur District. The charge against Accused No.3 is that he had fabricated pay certificate, letter of undertaking etc. in the name of Accused Nos. 1 & 2 and produced them before the bank in order to facilitate the loan transaction. Resultantly accused No. 1 got the loan.

3. The charge against the petitioner is that he along with the other three accused had entered into a conspiracy with an intention to cheat the Bank by introducing Accused No. 1 to the bank. I will refer to the other allegations against the petitioner in a little more detail at a later stage.

4. It is on record that the Manager of the Vijaya Bank, the defacto complainant, had set the law in motion initially and lodged a complaint before the Police against Accused Nos. 1 & 2 only. Annexure-I is the copy of the complaint filed by the Manager before the Judicial Magistrate of First Class, Thalassery in August 2003. The relevant paragraphs in Annexure-I reads thus:

> "*The accused are residing in the address shown above. On 24.12.2002, the Accused No.1 came to the bank and introduced himself as a bank clerk working in Kiliyanthara Service Co-operative bank, Kiliyanthara and requested for financial assistance from the bank, on account of his sister's marriage. The Manager explained the formalities to be complied for obtaining personal loan and having satisfied with the same, the Accused No.1 opened S.B. Account. The Accused NO.1 was 9introduced by M.Gangadharan, Advocate, Thalassery".*

5. A perusal of the paragraph extracted above shows that

the petitioner (M. Gangadharan, Advocate) had introduced Accused No.1 to the bank to enable him to open a Savings Bank Account. It was further averred in the complaint that on December 26, 2002, Accused No.1 had gone to the bank along with Accused No.2 and produced his salary certificate issued from Kiliyanthara Service Co-operative Bank and also with an undertaking signed by the Secretary of the said Bank stating that the employer was prepared to deduct the monthly instalments from the salary of Accused No.1, in case of default of payment. It was further averred that Accused No.2 had also produced his salary certificate to enable him to stand as guarantor for sanctioning the loan to Accused No.1. The loan amount was released to Accused No.1 after the execution of the necessary documents by Accused Nos. 1 & 2. It was specifically averred in the complaint that the loan amount was transferred to the S.B. Account of Accused No.1.

6. The above complaint was referred by the court to the Police for investigation under Section 156 (3) of the Code of Criminal Procedure. It was after completing the investigation that the Police had laid the charge sheet before the court in which the

petitioner was arraigned as Accused No.4. The 3rd accused, who was stated to be a client of the petitioner, was implicated as Accused No.3. Annexure-VIII is the relevant pages of the final report submitted by the Police before the court below. Investigating Officer implicated the petitioner for the reason that he had introduced Accused No.1 to the Bank for the purpose of opening an S.B. Account.

7. I have perused the relevant pages of the final report as well as the case diary, which has been made available by the learned Public Prosecutor at the time of hearing, in my anxiety to find out whether the contention raised by the petitioner that his role started and ended only with the introduction of Accused No. 1 to the bank to enable him to open a Savings Bank Account is correct or not. Petitioner has got a specific case that he had introduced Accused No.1 to the Bank since Accused No.3, who is one of his clients, had informed him that Accused No.1 was an acquaintance of him.

8. I have perused the relevant column of the form in which the petitioner had put his signature "as introducer". It is the admitted position that the petitioner is an account holder in the

same branch of the Bank. Therefore, it is understandable that when one of petitioner's clients and acquaintance introduces another of his acquaintance to the petitioner and makes a request to introduce the said person to the Bank, naturally petitioner might have obliged. Nothing more nothing less.

9. In this context, it is pertinent to note that in the complaint filed by the Bank before the Magistrate's court there was not even a whisper about any suspected complicity of the petitioner in the alleged transaction between the bank and Accused Nos. 1 & 2. The solitary sentence in the complaint about the petitioner is that he had introduced Accused No.1 to the bank to pen an S.B. account.

10. There is yet another aspect of the matter. The Bank had filed a suit against Accused Nos. 1 & 2 before the Subordinate Judge's Court, Thalassery as O.S. No. 39/04 for recovery of the amount due under the loan account. In the plaint the averment was that Accused No.1 (defendant No.1) had "introduced himself as a bank clerk in Kiliyanthara Service Co-operative Bank, Kiliyanthara". It was further averred that on the request made by the 1st defendant, the plaintiff-bank had sanctioned the loan

amount of Rs. 1 lakh and the defendant No.2 had stood as a guarantor for the said transaction". Yet again the bank had no case that it was on the basis of the introduction of defendant No.1 (accused No.1) as a clerk in another bank that the Bank had advanced the loan to him. It is submitted by learned counsel for the petitioner that the above suit had been decreed by the Subordinate Judge's Court in favour of the Bank.

11. As mentioned earlier, the defacto complainant had no case that the petitioner had introduced Accused No.1 loanee or that it was on the strength of the introduction that the loan was sanctioned to the loanee. It is a normal banking practice that a person who wants to open a Savings Bank Account or any other account will have to be necessarily get himself introduced by another account holder in the same branch. Petitioner had obliged one of his clients/acquaintances and introduced accused No.1 to the bank. On going through the case diary and the memo of charges, I am satisfied that it will be totally unjust and illegal to prosecute the petitioner in the peculiar facts and circumstances of this case. I have no hesitation to hold that the charge laid against the petitioner cannot be sustained. It is true

that this Court should be circumspect and cautious while invoking its power under Section 482 of the Code of Criminal Procedure to quash the proceeding pending before the Trial Court. But if the proceedings will result in miscarriage of justice, this Court should not hesitate to invoke its inherent power.

12. Learned counsel for the petitioner has invited my attention to the decision of their Lordship of the Supreme Court in **Manoranjan Das v. State of Jharkhand** (2004 AIR SCW 3558) and contended that the dictum laid down in the said case is squarely applicable in the facts and circumstances of the case on hand. In the case before the Supreme Court the appellant had introduced one Mr. Loknath Acharya to start a current account in the bank in May 1972. A cheque for Rs. 27,000/- was withdrawn by Loknath Acharya in October 1972. There was no other material to show that the appellant had any connection with the business of Loknath Acharya or any such other transaction between the latter and the bank. Their Lordship observed that in the absence of any evidence to show that the appellant instigated Loknath Acharya to present bogus drafts before the complainant Bank. It would be unjust to hold the appellant guilty

of the offence punishable under Section 420/109 IPC. There is considerable force in the contention raised by the petitioner that the dictum laid down by that Court is applicable in this case also.

In my view this is a fit case in which the inherent power under Section 482 has to be invoked. Therefore this Crl.M.C. Is allowed. The proceedings pending against the petitioner in C.C. No.447/04 on the file of the Judicial Magistrate of First Class Thalassery are quashed.

A.K. BASHEER, JUDGE

vps

KURIAN JOSEPH, JUDGE

OP NO.

JUDGMENT

21st DECEMBER, 2006